Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-98
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	

To: The Commission

COMMENTS

PUERTO RICO TELEPHONE COMPANY

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SUMMARY

The Commission should provide broad guidance to the states rather than detailed regulations in implementing the interconnection mandates of the Telecommunications Act of 1996. States should have the ability to address local market factors within the parameters set forth in new Sections 251 and 252 of the Act.

It is especially vital for the Commission to afford states the necessary discretion to address pricing standards. A national pricing regime could have the unintended result of inordinately increasing local rates. Such a result would be contrary to the goals of Congress.

Finally, the Commission should defer consideration of its access charge regime. In mandating new interconnection rights and procedures Congress did not intend to eliminate existing interexchange access charges.

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COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,[1] submits these Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM"). PRTC's Comments address the following issues raised in the NPRM: 1) the appropriate regulatory balance between the Commission and the states, 2) the pricing standards for interconnection, and 3) the status of the current access charge regime.[2]

I. INTRODUCTION

Congress has assigned to state commissions a vital role in the interconnection negotiations process. A common theme among the questions posed by the FCC in the NPRM is whether its rules should provide explicit standards to the states, or the states

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1. 47 C.F.R. § 1.415.

2. PRTC may offer reply comments on additional issues after review of comments submitted in this proceeding.

should implement the 1996 Telecommunications Act[3] according to broad federal guidelines. For example, the Commission has stated that an explicit approach will facilitate uniformity among states in implementing a national telecommunications policy and encourage uniform network configurations.[4] However, the Commission also notes that explicit rules could constrain state efforts to implement local competition.[5]

As a threshold matter, PRTC urges the Commission to uphold the spirit of the 1996 Act, which assigns to the states a prominent role in implementing local competition. The Commission should craft broad interconnection guidelines and permit the states to execute the specific telecommunications policy matters assigned to them by Congress.

II. THE COMMISSION SHOULD ESTABLISH GENERAL INTERCONNECTION GUIDELINES.

Congress has granted the states authority to govern interconnection requirements within their borders. With the sole exception of Section 251(d)(2) which directs the Commission to consider certain factors "in determining what network elements should be made available" for network access under Section

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3. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act")

4. NPRM at ¶¶ 28, 30.

5. Id. at 33.

251(c)(3), Congress did not manifest any intention that the Commission adopt detailed interconnection requirements. The statutory framework established by Congress thus envisions a regime in which the Commission would provide a blueprint for the state commissions to follow. The Commission should not attempt to provide detailed guidelines, the specificity of which eliminates all state discretion.

Congress has determined that voluntary negotiations, under the auspices of the states, are the principal vehicle for setting local interconnection terms and conditions.[6] Congress assigned the states the tasks of mediating and arbitrating interconnection agreement disputes,[7] establishing interconnection rates,[8] and approving Bell operating company statements of generally available terms.[9] Congress granted review of any such state actions by Federal district courts.[10]

This statutory structure demonstrates that Congress intended for the Commission to establish general interconnection guidelines and for states to address the details of proposed

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6. § 251(c)(1).

7. §§ 252(a)(2), 252(b), 252(c) & 252(e).

8. §§ 252(c)(2) & 252(d).

9. § 252(f).

10. § 252(e)(6).

interconnection agreements — including the prices to be charged for interconnection.[11] Beyond establishing broad Federal regulations to guide the states, the Commission may arbitrate interconnection negotiations only if states fail to perform their duties under Section 252.[12] Prescriptive Federal regulations preempting the ability of states to guide interconnection matters within their borders would be contrary to Congress intent.

If a state commission fails to perform its Section 252 duties of arbitrating interconnection agreement disputes, establishing interconnection rates, or approving Bell operating company statements of generally available terms, the Commission would have jurisdiction over those matters under Section 252(e)(5). Until then, however, the Commission does not have the authority to mandate interconnection terms or to establish interconnection rates. To do so would contravene the terms and spirit of the 1996 Act.

III. PRICING STANDARDS SHOULD BE IMPLEMENTED BY THE STATE COMMISSIONS.
(¶¶ 117-143)

Section 252(d)(1) of the 1996 Act provides that the state commissions will determine whether prices set by negotiating parties for interconnection and network element charges are just

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11. §§ 252(c)(2) & (d).

12. § 252(e)(5).

and reasonable. Interconnection rates are to be: 1) based on the cost of providing the interconnection or network element and 2) nondiscriminatory.[13] The rates also may include a reasonable profit.[14]

A. State Oversight Is Consistent With The Plain Language Of The Statute And Legislative History.

The Commission believes that the 1996 Act requires the FCC to establish pricing principles interpreting and further explaining the provisions of Section 252(d) for the states to apply in establishing rates in interconnection agreement arbitrations.[15] The Commission tentatively has concluded that establishing national pricing principles likely would improve opportunities for local competition by reducing or eliminating inconsistent state regulatory requirements, increasing the predictability of rates, and facilitating negotiation, arbitration, and review of agreements between incumbent local exchange carriers ("ILECs") and competitive service providers.[16]

These tentative conclusions, however, are inconsistent with the plain words of the statute and the legislative history which

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13. § 252(d)(2).

14. Id.

15. NPRM at ¶ 118.

16. Id. at ¶ 119.

designate the states as the arbiters of the pricing standards. Section 252(d)(1) requires non-negotiated interconnection compensation to be cost-based. Sections 252(c)(2) and 252(d) provide that state commissions — not the FCC — are to "establish any rates for interconnection." Thus, the Commission's interconnection policies must leave this role to the state commissions.

According to the House Conference Report, it is within the states' discretion to establish rates for specific provisions of an agreement.[17] Although the Commission may prefer national pricing standards, Congress did not mandate them. Congress, in placing with the states the authority to oversee pricing standards, recognized the benefits of permitting flexible approaches, within the confines of the standard set by Section 252(d), to allow for state variations.[18]

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17. H. Conf. Rep. No. 458, 104th Cong., 2nd Sess. at 125 (1996).

18. See NPRM at ¶ 51 (inquiring whether permitting substantial variations among state administration would make it easier for states to respond more appropriately to technical, demographic, or geographical issues specific to that state).

B. LRIC Methodology Must Not Be Implemented Without Careful Review.

Long run incremental cost ("LRIC") and total services long run incremental cost ("TSLRIC") — although neither mandated nor mentioned in the 1996 Act — have been discussed as means for setting price based on cost.[19] PRTC cautions against the uncritical adoption of the LRIC methodology or some form of it.

Although LRIC may hold superficial appeal as a means for regulators to set prices, implementation of the theory has not met with success. Parties have "questioned the appropriateness of the LRIC method as a basis for ratemaking" since at least 1975,[20] and the Commission previously has found that certain LRIC methodologies are "inadequate to allow us to fulfill our regulatory obligations" to ensure that rates are just and reasonable.[21]

Simply stated, the LRIC methodology will lead to extended controversy because it cannot be readily reconciled with the

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19. See, e.g., id. at ¶¶ 123-131.

20. See AT&T, Charges, Regulations, Classifications and Practices for Voice Grade/ Private Line Service, 55 FCC 2d 224, 234 (1975), recon. 58 FCC 2d 362 (1976), aff'd sub nom. Commodity News Services, Inc. v F.C.C., 561 F.2d 1021 (D.C. Cir. 1977).

21. AT&T, Manual and Procedures for the Allocation of Costs, Notice of Proposed Rulemaking, 78 FCC 2d 1296, 1302-03 (1980) (describing finding in Revisions of Tariff FCC No. 260 Private Line Services, Services 5000 (TELPAK), 61 FCC 2d 587, 629 (1976), aff'd, 70 FCC 2d 616 (1978) ("Private Line Services")).

costs actually incurred in providing a service. It also has the potential to thrust unfair and potentially illegal[22] burdens on ordinary ratepayers, because it does not adequately address how common costs will be recovered. The Commission identified this flaw during its review of AT&T's use of LRIC to set rates for private line services. "AT&T's version of LRIC . . . appeared to be merely a special form of full cost pricing in which incremental costing was applied only to private line services, leaving monopoly services to bear almost all overhead costs."[23] The Commission stated in the Private Line Services proceeding that

> incremental analysis is not designed to address what is to be done with "unallocable" common or fixed costs . . . . Clearly, costs which remain unattributable as a result of not changing in response to alternative rates lie outside the theoretical construct of incremental costing.[24]

Also, carriers have been unable in the past to provide the Commission an acceptable means to verify LRIC results.[25] In

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22. See § 254(k) which limits the assignment of common costs to universal services.

23. Separation of Costs of Regulated Telephone Service from Costs of Non-regulated Activities, 104 FCC 2d 59, 66 (1986).

24. Private Line Services, 61 FCC 2d at 629.

25. Id.

response, the Commission made "a broad determination that AT&T's reliance on [LRIC] was unfounded."[26]

The problems associated with LRIC indicate that setting prices under this methodology could lead to unanticipated increases in local exchange rates. Incremental costing may permit few, if any, common costs to be allocated to the service for which the LRIC-based price is being set. In the past, setting prices in this manner for interconnectors, commercial mobile service providers and competitive access providers may not have placed extreme pressure on local rates, because their proportion of network usage was not great enough to do so. However, once competition brings new interconnectors to the network for even more services, local exchange carriers could be required to maintain and expand their networks without recovering their embedded costs from all users.[27]

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26. Petition for Review of Accounting Orders Imposed in Tariff Investigations, 4 FCC Rcd 8405, 8407 (1989); see also Revisions to Tariff No. 259, Wide Area Telecommunications Services (WATS), Transmittal No. 12745, 66 FCC 2d 9, 35, aff'd, 69 Fcc 2d 1672 (1978) (rejecting LRIC approach to ratemaking for WATS).

27. The cost of any element that is not included in setting the price for interconnection must be covered by some other customer. For this reason, PRTC urges the Commission to avoid making categorical exclusions of network elements from cost recovery. This level of detail should be left to the states who will have more immediate knowledge of the interplay between interconnection rates and other rates to be charged.

It would be inappropriate to implement the interconnection provisions of the 1996 Act without considering the impact of pricing standards on customers who may not be afforded pricing based upon LRIC. The Commission must avoid implementing pricing standards that shift common network costs to residential subscribers, because other services have been spared the obligation to cover common costs. Such an outcome would be contrary to Congress intent and the public interest.

C. If The Commission Does Establish A Pricing Standard, It Should Establish A Range Of Acceptable Prices.

If pricing is not reserved to state commissions as intended under the Act, then PRTC favors the Commission setting a rate ceiling to protect against excessive rates, while giving states latitude to administer arbitration proceedings. Price ranges are preferable to the prescription of a detailed pricing methodology.[28] Flexible price ranges are necessary for states to account for pricing variations across the nation caused by differences in population density, average income levels, and diverse terrain and climate characteristics. Within the boundaries of the Commission's rate parameters, states would be free to review and establish interconnection and unbundled element rates through their role in the arbitration process.

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28. See NPRM at ¶¶ 134-136.

Congress gave the states the authority to determine the just and reasonable rate for interconnection and network elements. Therefore, the Commission should not set the pricing methodology such that states would have little latitude within which to carry out this function. However, should the Commission proceed upon its proposed path of establishing a pricing standard, the Commission will most closely approximate the discretion for states intended by Congress by setting a range for prices.

IV. SECTIONS 251 AND 252 SHOULD NOT BE INTERPRETED TO DISPLACE THE CURRENT ACCESS CHARGE REGIME. (¶¶ 159-165)

Implementation of the interconnection requirements imposed by the 1996 Act should not displace the current access charge regime. Section 251(c)(3) requires an ILEC to provide unbundled access to any requesting telecommunications carrier for the provision of a telecommunications service. Some have argued that this provision would allow interexchange carriers to discontinue paying charges as prescribed by Part 69 of the Commission's Rules.[29] This interpretation, however, would produce a result contrary to the public interest and create internal inconsistency within Section 251.

PRTC agrees with the Commission that the interconnection proceeding raises issues closely related to issues that may be

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29. See id. at ¶ 164.

addressed in a revisitation of the Part 69 access charge rules.[30] PRTC supports the Commission's goal to conclude such considerations in a "comprehensive, consistent, and expedited fashion."[31] However, if interpretation of the 1996 Act permits the immediate revision or elimination of the access charge rules, a massive increase in local rates could occur.[32] This result is contrary to the public interest and Congressional intent in passing the 1996 Act.

PRTC also agrees with the Commission's suggestion that "allowing interexchange carriers to circumvent Part 69 access charges by subscribing under Section 251(c)(3) to network elements solely for the purpose of obtaining exchange access may be viewed as inconsistent with other provisions in section 251."[33] Section 251(g) requires that local exchange carriers

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30. See id. at ¶ 3.

31. Id. Similarly, the Commission acknowledges that although the access charge regime is not displaced by sections 251 and 252, different pricing rules for unbundled elements and for interstate access rules may create economic inefficiencies. Id. at ¶ 146. Therefore, these issues must be considered in a coordinated manner.

32. It has been estimated recently that about $13 billion of the $18 billion in local phone company subsidies is funded by access charges. Sudden elimination of almost 75% of the subsidy source undoubtedly would result in an increase in the local rates. See "Phone Firms Seek Higher Local Rates," Washington Post, A1, A8 (May 7, 1996).

33. NPRM at ¶ 164.

shall provide exchange access to interexchange carriers "in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)" that applied prior to the passage of the 1996 Act.[34] The existing standards shall apply until "explicitly superseded by regulations prescribed by the Commission."[35] Therefore, Congress did not intend that the existing access charge payments be cast aside, either entirely or immediately.

This interpretation is also consistent with the savings provision of Section 251.[36] Pursuant to this section, the Commission's authority under Section 201 is not limited or affected by Section 251. It is under Section 201 that the Commission has authority to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act,"[37] including the "establish[ment of] physical interconnection with other carriers."[38] Therefore, the Commission retains its authority to revisit access charge issues,

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34. § 251(g).

35. Id.

36. § 251(i).

37. 47 U.S.C. § 201(b).

38. 47 U.S.C. § 201(a).

but it is not required to do so in the context of interconnection requirements imposed under Section 251.

Reformation of the access charge regime is beyond the scope of the local competition proceeding. Although the rapidly changing telecommunications markets and regulations to implement new statutory requirements have precipitated a review of these charges, to discard them completely based on an inconsistent interpretation of statutory language would be irresponsible. The one aspect of the 1996 Act that can be agreed upon generally is that Congress intended it to be beneficial to consumers.[39] The local rate increases that would result from a premature elimination of the access charge regime is the antithesis of this goal. Therefore, consideration of access charges should be reserved to a separate proceeding wherein the impact of various proposals may be adequately vetted prior to their implementation.

V. CONCLUSION

Based on the foregoing, PRTC respectfully urges the Commission to implement broad interconnection guidelines, rather than detailed specifications, for implementation of state obligations. The Commission should reserve to states the

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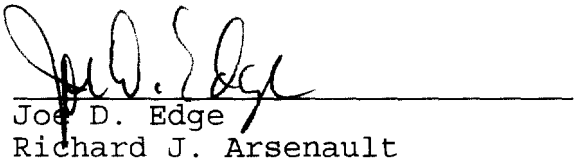
39. See H. Conf. Rep. No. 458, 104th Cong., 2nd Sess. at 113 (1996).

implementation of pricing standards and defer reform of the access charge regime for a separate proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Marjorie A. Schroeder, hereby certify that a copy of the foregoing was delivered by hand on May 16, 1996 to the following:

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